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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	
Terms, and Conditions for	)	CC Docket No. 94-97,
Expanded Interconnection Through	)	Phase I
Virtual Collocation for	)	
Special Access	)	
and Switched Transport	)	DOCKET FILE COPY ORIGINAL

ELECTRIC LIGHTWAVE, INC. OPPOSITION TO DIRECT CASES

Electric Lightwave, Inc. ("ELI") hereby submits its Opposition to the Direct Cases filed by the Local Exchange Carriers ("LECs") in response to the Commission's *Designation Order*[1/] in the above-captioned proceeding. Specifically, ELI supports the Commission's comparison of overhead loading factors for virtually collocated services and comparable LEC services. ELI maintains that the Commission policy is based on sound economic and legal theory and is essential to the continued development of competitive local networks. Furthermore, ELI herein vigorously opposes U S West's efforts to narrowly define "comparable services" for the purposes of determining whether a LEC has applied overhead charges to a virtually collocated competitor in an unreasonably discriminatory fashion. As ELI discusses below, the Commission should

[1/] *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, Order Designating Issues for Investigation, CC Docket No. 94-97, DA 95-374 (released February 28, 1995) (*Designation Order*).

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prescribe reduced rates for U S West's virtual collocation services, based upon data in the public record.

I. THE COMMISSION'S POLICY PROHIBITING DISCRIMINATORY APPLICATION OF OVERHEAD LOADING FACTORS IS APPROPRIATE AND ESSENTIAL TO THE DEVELOPMENT OF COMPETITIVE NETWORKS

The LECs' Direct Cases, and particularly the comments of U S West, attempt to undermine the very foundation of the Commission's *Designation Order* by asserting that it is unreasonable for the Commission to reach the conclusion that it may prohibit LECs from the discriminatory application of overhead loading factors among comparable services. These arguments are without basis and must be rejected as the Commission's policy is supported by strong legal precedent and a sound economic justification.

The Commission has express legal authority to prohibit discriminatory application of loading factors. Section 202(a) of the Communications Act clearly states that "it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges . . . for or in connection with like services."[2/] The Commission has used this express authority on numerous occasions to ensure that competitors gain access to bottleneck facilities at reasonable, nondiscriminatory prices. With respect to the overhead charges, the LECs' pricing schemes have led the Commission to conclude that the "LECs tend to assign low overheads in markets where they face actual or potential

[2/] 47 U.S.C. § 202(a).

competition from interconnectors and assign high overheads where they do not."[3] The Commission therefore concluded that its "policy of promoting competitive entry into the local exchange market would be frustrated" by the LECs' discriminatory pricing of overhead charges.[4] Accordingly, the Commission's imposition of a non-discriminatory pricing scheme is clearly substantiated by the record and is well within its authority and discretion under the Communications Act.

As a competitive local provider, ELI is acutely aware of the incentives underlying LEC discrimination in the pricing of competitive services. LEC pricing discrimination undermines ELI's ability to compete for customers or to structure its network efficiently and to obtain necessary economies of scale. The Commission's prohibition of the discriminatory application of overhead loading factors is an essential condition for any real local competition. The failure to require the application of comparable loading factors would permit the LECs to impose excessive amounts of overhead on collocated competitors -- in effect forcing ELI and other competitors to subsidize the LECs' provision of competing services, and potentially imposing a price squeeze on competitors who must use LEC bottleneck services. From a competitive standpoint, therefore, the Commission's prohibition of such pricing practices is both sound and reasonable.

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[3] *Ameritech Operating Companies et al.*, CC Docket No. 94-97, Order DA 94-1421, 77 RR 2d. 1410, ¶ 21 (released Dec. 9, 1994) (*Virtual Collocation Tariff Suspension Order*).

[4] *Id.* at ¶ 22.

II. U S WEST'S ATTEMPT TO DEFINE "COMPARABLE" SERVICES NARROWLY VIOLATES THE COMMISSION'S ORDERS, AND MUST BE REJECTED

Under the Commission's *Designation Order*, LECs must provide, *inter alia*, their unit investment components, and annual cost factor data for DS1 and DS3 services with the lowest overhead loadings and for other "comparable" services.[5] In requesting this data, the Commission relies upon its previous finding in the *Tariff Review Plan Order* that the DS1 and DS3 virtual collocation services are comparable to all LEC point-to-point DS1 and DS3 services.[6] Nonetheless, in spite of these findings, U S West insists on taking the extreme position that none of its tariffed services are comparable to virtual collocation.[7] U S West's position is an unreasonable and self-serving attempt to avoid its obligations under the *Designation Order*. In fact, for the purposes of responding to the *Order*, U S West assumes only that its DS1 and DS3 channel terminations for single circuits taken on a *month-to-month* basis are comparable to virtual collocation and, as such, provides limited data that not only fail to adequately respond to the requirements of the *Designation Order*, but also blatantly overstate the actual costs of interconnection.

U S West fails to fulfill the requirements of the *Designation Order* by refusing to provide data concerning its Self-Healing Alternate Route Protection ("SHARP") service and its volume and term discounted rate structures. Such data, however, demonstrate

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[5] *Designation Order* at ¶ 17(b).

[6] *Tariff Review Plan Order*, 9 FCC Rcd. 5679 at ¶¶ 11-15 (1994).

[7] U S West Direct Case at 4.

that U S West's virtual collocation rates are excessive. When SHARP was introduced in 1990, the cost data provided by U S West demonstrated that the introductory rates for SHARP services reflected lower rate/cost ratios than U S West's virtual interconnection rates. For example, in 1990 U S West identified a rate/cost ratio of 1.07 for its SHARP DS1 channel terminations taken on a month-to-month basis,[8] versus the rate/cost ratio of 1.40 for DS1 interconnection cross-connects reflected in the U S West Direct Case.[9] Because SHARP rates have been incorporated into U S West's Price Cap rate structure, no current detailed cost data are available. However, because U S West markets SHARP services aggressively in areas where CAP competition has begun to evolve, it is unlikely that the SHARP rate/cost ratio have increased.[10]

U S West maintains that SHARP service is not comparable to DS1 and DS3 because of "different service provisioning configurations," although it does not provide

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[8] U S West Tariff FCC No. 1, Transmittal No. 80, issued June 4, 1990, at Section 3.3, Workpaper 1, page 1. Notably, the ratios for SHARP channel terminations taken for long-term commitments are even lower, with the longest term rates falling below U S West's identified costs.

[9] *Compare* U S West Direct Case, Appendix A, Worksheet TRP1TOT.XLS, indicating a DS1 cross-connect monthly unit cost of $12.28 *with* $17.22 U S West's currently effective DS1 cross connect rate contained U S West Tariff FCC No. 5, § 21.8.4). This analysis compares U S West's costs with the cross-connect rate that has been substantially reduced by the Commission order. The DS1 cross-connect rate tariffed by U S West before the Commission rate adjustment factor was $21, which resulted in a cost/rate ratio of 1.71.

[10] Because U S West has refused to comply with the *Designation Order* and has not provided current data, it is fully appropriate, and indeed necessary, for the Commission to prescribe rates based on the most recent data available in the public record -- the 1990 data filed when the SHARP service was introduced.

any justification for this assertion. In fact, U S West introduced SHARP services in order to compete with CAP fiber-ring networks. SHARP services are also similar to CAP services in that they are provided over redundant and diverse fiber ring facilities. U S West's omission is particularly egregious given the Commission's previous finding in its *Tariff Review Plan Order* that comparable DS1 and DS3 services *include* "any specialized service offerings, *e.g.* self-healing network services."[11] U S West's refusal to provide this information appears therefore to directly contravene the Commission's *Designation Order*.[12]

Furthermore, ELI maintains that U S West's failure to account for volume and term discounts results in excessive virtual interconnection charges. A review of U S West's discounted high capacity services indicates that in 1991, U S West introduced a discounted rate structure for customers who purchased up to 36 DS3 circuits for terms of up to 10 years.[13] The cost support demonstrates that U S West's discounted DS3 filing utilizes *significantly* lower annual cost factors for maintenance, depreciation, and administrative overheads for its DS3 service than for its expanded interconnection service.[14] This variance in the application of overheads results in a monthly unit cost

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[11] *Id.* at ¶ 14.

[12] *Designation Order* at ¶ 15.

[13] U S West Tariff FCC No. 1, Transmittal No. 222, issued December 31, 1991.

[14] A comparison of the U S West Direct Case cost data for EICT interconnection service and the data used to support is volume and term discounted DS3 channel termination rates produces the following comparison. Depreciation for EICT services is (continued...)

of $23.53 for some discounted DS3 services, compared with a monthly unit cost of $43.49 for U S West's DS3 collocation cross-connect rate element.[15] It is therefore clear that application of the same volume and term discounted rate structures to both high capacity services and comparable virtual interconnection arrangements would result in significant reductions in the rates for virtual collocation.

Based on the publicly-available data discussed above, the Commission should prescribe rates for U S West's virtual collocation service that eliminate the unreasonably discriminatory preferences given to U S West's preferred special access customers. Specifically, the Commission should prescribe a rate/cost ratio of 1.07 for all virtual collocation rates, and should prescribe a volume and term discounted rate structure that provides collocation with the same discounts available to U S West's special access customers.

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[14](...continued)
calculated using a .1080 cost factor versus .1061 for DS3 service. Cost factors for EICT Maintenance are .0214 compared with .0151 for DS3 service, and EICT administrative costs are .0227 versus .0139 for DS3 services. *Compare* U S West Direct Case, Appendix A, Worksheet TRP3TOT.XLS *with* U S West Tariff FCC No. 1, Transmittal No. 222, issued December 31, 1991, Description and Justification, Section 2, Workpaper 1.

[15] *Compare* U S West Transmittal No. 222, D&J Section 2, Workpaper 1, page 14 *with* U S West Direct Case, Appendix A, Worksheet TRP3TOT.XLS.

III. CONCLUSION

Accordingly, the Commission should reject any reconsideration of its prohibition on the discriminatory application of overhead loading factors and should prescribe rates for U S West's virtual collocation service consistent with the above discussion.

Respectfully submitted,

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Dated: April 4, 1995

Certificate of Service

I, William B. Wilhelm, Jr., hereby certify that a copy of the foregoing *Opposition* was sent, on this 4th day of April, 1995, by first class U.S. mail, postage prepaid to the parties listed in the attached service list.

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